

INCREASING THE OVERSIGHT ROLE IN THE USAGE OF PUBLIC FUNDS IN KENYA

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ABSTRACT

The Corruption levels in Kenya are so pervasive, that the country's president in 2016 referred to it as a national threat. From poor revenue recording, to unlawfully incurred expenditure and even funds that cannot be accounted for, the country is losing billions of dollars to corruption. Since independence, each president of Kenya has a scandal that can be associated with their reign and senior government officials are often involved with grand corruption cases. To date, no one is serving time for any of the grand corruption cases that cost the government millions of dollars and took away money that could have used towards development.

This paper looks at the grand corruption scandals that have hit the country and the amount of money lost. It also addresses the actions that have been taken by the establishment of anti-corruption commissions in the country. In the background section, it addresses the current challenges that the country is facing through current corruption scandals in the country.

This paper recommends a policy change geared towards increasing the oversight role of the Auditor General's office, with the hope of reducing the grand corruption cases in the county, increasing accountability and catching fraud before it is too late.

Advisor: Prof. Paul Weinstein

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To: The President of the republic of Kenya

From: Eva Okoth

RE: Increased oversight in the usage and management of Public funds

Action Forcing Event

Kenya is experiencing pervasive corruption with new scandals reported in the media on a nearly daily basis, and the country's president has even said that corruption in the country has become a national threat.¹ The Kenyan auditor general's 2013-2014 audit report showed that only 3.8% of total revenue recorded in the year was fairly recorded and had an unqualified opinion, while 96.1% had issues in how it was recorded resulting in a qualified opinion, and only 1.2% of the total expenditure was incurred lawfully and in an effective way.² The president, Chief Justice and leaders both local and international have all called for action to be taken against corruption, as it is an impediment to development.

Statement of the Problem

The World Bank and other international organizations define corruption as the "abuse of public office for public gain", and is said to flourish where institutions are

¹ Nsehe, Mfonobong, Corruption And 'Tenderpreneurs' Bring Kenya's Economy To Its Knees, Forbes, 12.1.2015

² Office of the Auditor general, summary report 2013_2014. http://www.kenao.go.ke/index.php/reports/cat_view/2-reports/9-national-government-and-state-corporations/69-government-ministries Pg 20 Accessed January, 2016

weak as it provides a fertile environments for corruption to prosper.³ Transparency International ranked Kenya 139 out of 168 countries in its 2015 Corruption perceptions index, with a score of 25 out of 100, the same score that Kenya received the previous year and indicates serious levels of public sector corruption.⁴ The President of Kenya, Uhuru Kenyatta, has stated that corruption has contributed to creating an environment that hampers the growth of business as well as hindering the government's ability to effectively offer services to its citizens.⁵ Kenya's chief Justice has also voiced his concern, stating that the corruption level in the country is endemic, and appealing to the president to prioritize actions to help eradicate this menace.⁶ President Obama and the Pope have joined the clarion call to those opposing the runaway corruption, decrying the effects it is having on the country.⁷ Ordinary Kenyans who are suffering the most from this vice are also standing up against it, holding demonstrations and challenging the leaders through social media and clamoring for change.

Poor financial management and record keeping enables funds to be easily diverted and used before the theft can be detected, by circumventing the proper allocation process and therefore helping to promote corruption. Procurement in the public sector is of particular concern. According to the country's Ethics and Anti-

³ Corruption, Helping Countries Combat. "the Role of the World Bank." Poverty Reduction and Economic Management, the World Bank (1997),8.

⁴Table of results: Corruption Perceptions Index 2015, <https://www.transparency.org/cpi2015>

⁵ Hellen Nyambura-Mwaura, "Kenya President Says Corruption a National Security Threat," Standard Digital, November 23, 2015

⁶ Koert Lindijer, Kenya is run by mafia-style cartels, says chief justice, *The Guardian*, 13 January, 2016

⁷ The White House Office of Press Secretary, Remarks by President Obama to the Kenyan people, July 26 2015, <https://www.whitehouse.gov/the-press-office/2015/07/26/remarks-president-obama-kenyan-people> -Accessed January 2016

corruption commission (EACC), 70% of all corruption in the country relates to procurement, especially in government ministries.⁸ A report released by a parliamentary committee highlighted the millions of dollars lost through inflated prices. A key example was ball point pens that were apparently purchased at \$85 a pen.⁹

In 2015, the Kenyan government issued a bond, raising approximately two billion dollars from American and European investors. The funds collected from the Euro bond, as it more famously referred to, were to be used for infrastructure projects, energy, transport and agriculture.¹⁰ Currently the Kenyan government cannot fully account for all the funds, with claims from the opposition that part of the funds had been spent on lavish government spending and to pay off loans rather than use it for the intended purposes.¹¹ Whilst investigations are still pending, the inability for the government to be ready to immediately account for the funds raises some serious questions and highlights the lack of a proper financial and accounting management system.

This paper suggests policy actions that could be implemented to reduce the occurrence of grand corruption cases and enhance accountability by the government agencies thereby reducing the runaway losses that are currently crippling the Kenyan economy and development projects.

⁸ Duncan Miriri, "Kenya forms team to draw up plan to fight corruption," Reuters, November 13, 2015

⁹ Jeffrey Gentleman, "An Anticorruption Plea in Kenya: 'Please, Just Steal a Little'", The New York Times, Nov 4, 2015.

¹⁰ David Malingha Doya, Kenya to use \$2 Billion Eurobond proceeds as growth catalyst, Bloomberg Business, November 11, 2013.

¹¹ Andrew Teyie, Questions over use of Eurobond billions as state borrowing sends rates through the roof, Daily Nation, October 10, 2015

HISTORY

After gaining independence from British colonial rule in 1963, Kenya's first president Jomo Kenyatta and his successor Daniel Arap Moi established and maintained a one-party rule system, that was described as authoritarian and characterized by widespread corruption, looting of state assets, and economic mismanagement.¹²

Historically, land allocations were generally made as a reward for political loyalty or to achieve political cooperation.¹³ Mr. Kenyatta and Mr. Moi, public officials, members of the judiciary, well-connected politicians and businesses all perverted the constitutional requirement for public land to be administered in the interest of the public and instead allocated it illegally, to suit their own personal needs.¹⁴ But it is President Kenyatta who is most credited with introducing the seeds of rot in Kenya institutions.¹⁵

When president Moi took over from Kenyatta in 1978, there was much less land to easily allocate.¹⁶ Moi instead used other methods to favor his cronies through public spending.¹⁷ Under his rule, Kenya could be described as a "dispenser of patronage and resources", that created conditions and policies that gave the political elite the

¹² Samira Lindner, Overview of corruption and anti-corruption in Kenya, Anti-corruption Helpdesk, Transparency International, October 25, 2014

¹³ Kegoro, George. "Money laundering patterns in Kenya." *Profiling Money Laundering in Eastern and Southern Africa*, edited by C. Goredema. South Africa: Institute for Security Studies, Monograph 90 (2003).

¹⁴ Ambreena Manji, Whose land is it anyway? The failure of land reform law in Kenya, Africa Research Institute, August 1, 2015.

¹⁵ Scher, Daniel. "Asset recovery: Repatriating Africa's looted billions." *African Security Studies* 14, no. 4 (2005): 17-26.

¹⁶ Jacqueline M. Klopp, "Pilfering the Public: The problem of Land Grabbing in contemporary Kenya", Africa Today,

¹⁷ Burgess, Robin, Rémi Jedwab, Edward Miguel, and Ameet Morjaria. "Our turn to eat: The political economy of roads in Kenya." Manuscript, London, UK: London School of Economics and Political Science (2010).

opportunity to accumulate wealth¹⁸. A direct result of this was that, being in power or being close to those who are in power, was the main reason for being involved in political activity and politics became a principal source of wealth creation, a trend that is still seen to date. Moi's regime was notorious for the extent to which politicians looted the national treasury, extracted illegal rent from the private sector, and accumulated huge fortunes.¹⁹

One of the major financial scandals to have affected the country is referred to both locally and internationally as the 'Goldenberg scandal', named after the company that was used to defraud the Kenyan government. Goldenberg International limited was a firm registered in August 1990 by the Registrar of companies, a Kenyan company registry under the office of the attorney general²⁰. According to Kenyan economist Peter Warutere, the Goldenberg scandal was the most blatant case of corruption associated with the Moi government²¹. Warutere described it as a high level conspiracy by senior officials of the Moi administration in Kenya, together with local and international dealers, who capitalized on the government's desperation for foreign exchange and the greed of the administration's cronies.

¹⁸. Ajulu, Rok. "Kenya: one step forward, three steps back: the succession dilemma." *Review of African Political Economy* 28, no. 88 (2001): 197-212.

¹⁹. Wolf, Thomas P. "Immunity or accountability? Daniel Toroitich arap Moi: Kenya's first retired president." *Legacies of Power. Leadership Change and Former Presidents in African Politics* (2006): 197-232.

²⁰ Peter Warutere, "The Goldenberg conspiracy, the game of paper gold, money and power", Institute for security studies, September, 2005

²¹ Warutere, Pg 16

The Goldenberg scandal, 1991-1993, revolved around a deal between government officials and Kenyan businessman Kamlesh Pattni. Pattni agreed to remit \$50 million annually to the Central Bank of Kenya in exchange for a monopoly on gold and diamond exports from Kenya and a government compensation of 35% on his exports²². As Kenya is not a large exporter of gold or diamonds, Pattni exported fictional commodities to fictional companies then paid for them in fictional foreign exchange, after which he presented fictitious compensation claims for payment to the Central Bank of Kenya (CBK), which were honored and paid. Many observers believe that there is credible evidence that President Moi and his senior aides were involved in the Goldenberg affair and received a share of the compensation that was paid to Pattni.²³ The Goldenberg scandal is said to have cost the Kenyan government a cumulative cost of \$600M to \$1 billion dollars, an amount equivalent to between 9 to 16% of the country's GDP in 1994.²⁴

In 2002, Mwai Kibaki was democratically elected in multiparty elections, which brought an end to 24 years of Moi's rule. Kibaki's election raised hopes among Kenyans and donors, as it was based on an ambitious reform agenda which included universal primary education, economic growth, adoption of a new constitution and the fight against corruption. Soon after his election, President Kibaki created a new Ministry of Justice and Constitutional Affairs to coordinate the anti-corruption campaign. He also

²². Lawson, Letitia. "The politics of anti-corruption reform in Africa." *The Journal of Modern African Studies* 47, no. 01 (2009): 73-100.

²³. Mutua, Makau. "Justice under siege: the rule of law and judicial subservience in Kenya." *Human Rights Quarterly* 23, no. 1 (2001): 96-118.

²⁴. Report No. 42844-KE, Kenya: Accelerating and Sustaining Inclusive Growth, Poverty Reduction and Economic management Unit 2, country department for Kenya, Africa region, July 2008, World Bank.

appointed John Githongo, a journalist, and a former investigator for Transparency international as Kenya's first anticorruption czar, in the newly created position of Permanent Secretary in the office of the president for Governance and Ethics.²⁵

Unfortunately, a year and a half after his election, the Anglo-leasing graft scandal became public, and President Kibaki's protection of the cabinet members involved in the scandal, marked the end of the anti-corruption war that he had begun²⁶. The Anglo-Leasing scandal was a procurement scheme which involved "government funds being paid to shadowy foreign companies for services ranging from forgery proof passports to naval ships and forensic laboratories –which never materialized."²⁷ Anglo Leasing was a private company supposedly registered in the UK, which was awarded a US\$35 million government contract in December 2003 to produce tamper-proof passports and was the main vehicle for the illegal payments.²⁸ Subsequent reports by Kenya's Parliamentary Accounts Committee found that a total of 18 contracts were involved, 12 which had been initiated and completed under Moi's rule and the rest during Kibaki's presidency.²⁹

²⁵. Otieno, Gladwell. 2005. "THE NARC'S ANTI-CORRUPTION DRIVE IN KENYA." *African Security Review* 14, no. 4: 69-79. *International Security & Counter Terrorism Reference Center*, EBSCOhost (accessed February 26, 2016).

²⁶ Bachelard, Jérôme Y. "The Anglo-Leasing corruption scandal in Kenya: the politics of international and domestic pressures and counter-pressures." *Review of African Political Economy* 37, no. 124 (2010): 187-200.

²⁷. Reuters, "Kenya Makes First Conviction in Anglo Leasing Graft Scam," Reuters.com, September 5, 2012, <http://www.reuters.com/article/2012/09/05/kenya-corruption-idUSL6E8K5A6820120905>.

²⁸ . Bachelard, Jérôme Y. "The Anglo-Leasing corruption scandal in Kenya: the politics of international and domestic pressures and counter-pressures." *Review of African Political Economy* 37, no. 124 (2010): 187-200.

²⁹ . Krishnan, Chandrashekhar, *Tackling Corruption in Political Party Financing: Lessons from Global Regulatory Practices* (May 8, 2014). Edmond J. Safra Working Papers, No. 43. Available at SSRN: <http://ssrn.com/abstract=2433257> or <http://dx.doi.org/10.2139/ssrn.2433257>

Multiple investigations into these scandals have shown that highly placed elected officials, and civil servants had knowledge, if not direct involvement, of the fictional companies being used to appropriate public funds for personal and political uses, a problem that continues to besiege the country.³⁰

Kenya has made some efforts directed at 'fighting' corruption in the country. In 1956, the first legislation to address graft, the Prevention of corruption Act was enacted. It was enforced by the police department but did not have much impact. The Act was amended in 1997 creating the Kenya Anti-Corruption Authority (KACA) which was short lived after being invalidated by the High court in 2000 for being in conflict with the constitution. The prosecution powers that it had been given only lay within the office of the Attorney General according to the constitution. Through an executive order in 2001, the Anti-corruption Police unit was created and it took over the KACA's function, till the creation of the Kenya Anti-Corruption Commission (KACC) in 2003. KACC was established under the Anti-Corruption and Economic Crimes Act, (ACECA) a legislation that was enacted by Parliament in 2003 and resulted in the repeal of the Prevention of corruption Act. In 2011, President Kibaki signed the Ethics and Anti-Corruption Act enabling parliament to disband KACC, and establish the Ethics and Anti-corruption Commission (EACC). Since the establishment of these agencies, several directors of the Anti-Corruption commissions have been suspended or forced to resign on suspicion of

³⁰ Lawson, Letitia. "The politics of anti-corruption reform in Africa." *The Journal of Modern African Studies* 47, no. 01 (2009): 73-100.

graft. In addition, the commitment to the fight against graft has been questioned as no one is facing jail time for grand corruption

Because of the high levels of perceived corruption in the country, many foreign donors stopped giving aid to the country. In 2001, Kenya's economy was at its worst state since independence, and the government was at risk of not receiving \$300M of international aid that had been built into the budget.³² The International Monetary fund (IMF) had frozen lending to Kenya in 1997, and given many conditions that had to be met before Kenya could continue to receive aid, one of which was the creation of the Kenya Anti-corruption Authority. The IMF resumed its lending to Kenya in 2003, during Kibaki's presidency and after the establishment of the EACC.³³

Anti-corruption institutions and programs in Kenya have acquired elitist characteristics with the predisposition of being established or easily manipulated, to serve interests other than the eradication of corruption.³⁴

BACKGROUND

Kenya's promulgation of a new constitution in 2010 provided "enhanced checks and balances within the government, and enhances the role of Parliament and citizens, an independent judiciary, and importantly, it provided for a major devolution—not only

³² Lacey, Mark. "Anti-graft bill in corrupt Kenya fails in parliament, Lack of passage threatens IMF aid." *New York Times News Service*, August 15, 2001

³³ The Economist, Dirt out, Cash in, Nov 27, 2003

³⁴ Kahuha, Gaitho Peter. "From institutional and programmatic approach to alternative management of corruption in Kenya." PhD diss., university of Nairobi, 2015.

of resources and functions, but a whole new layer of county government”.³⁵ Many Kenyans believed that the new form of government would play a role in the fight against corruption. Parliament would supervise all presidential appointments, the judiciary would be a separate governmental entity, the newly formed senate would oversee parliament and the cabinet would be comprised of professionals and not politicians as in the past regimes, who would be made ministers because of their connections to the president.

In 2010, finance ministry officials told a parliamentary committee that the government could be losing \$4B a year to corruption, an amount which represents almost a third of the national budget.³⁶ The latest audit report from Kenya’s auditor general suggests that the potential for graft still exists. In the 2013/214 financial year, with an annual budget of \$16B, only 1.2% of total expenditure was incurred lawfully and in an effective way, following the government’s accounting standards.³⁷ For example, the health department failed to account for \$216M worth of spending, and an amount of \$2B had been transferred to an off-shore account against regulations.³⁸ When expenses can be incurred without going through the proper procedures, there exists an opportunity for misallocations and misdirection of funds. The country is currently addressing several scandals that involve the abuse of office and loss of public funds,

³⁵. Finch, Chris, Musira Lucy, The World Bank and Devolution in Kenya , Kenya’s Devolution, <http://www.worldbank.org/en/country/kenya/brief/kenyas-devolution>

³⁶. Mwachiro, Kevin, Kenya Corruption costs government dearly, BBC News Nairobi, 12/3/2010

³⁷ Office of the Auditor general, Summary report 2013_2014

http://www.kenao.go.ke/index.php/reports/cat_view/2-reports/9-national-government-and-state-corporations/69-government-ministries Accessed January, 2016

³⁸Africa, Kenya audit: Government accounts ‘disturbing’ BBC News, <http://www.bbc.com/news/world-africa-33708519> accessed 4/11/2016

which signifies that the problem still persists and current mechanisms in place to safeguard the government assets are not effective enough.

The National youth Service Scandal

The National Youth Service (NYS) is said to have lost approximately KES 800M (\$8M US) through irregular transfers from its bank accounts after an NYS official discovered that his name was used to validate fraudulent payments. More than 20 senior government officials have been implicated in the scandal that is still being investigated, and includes conspiracy to defraud another KES 695M (\$6.95M US) from the NYS.

The investigations into the alleged corruption were initially carried out by the criminal investigation directorate, who ordered the prosecution of the government employees implicated. However, as the director of public prosecution felt that the crimes fell under different agencies, he requested that an inquiry that includes all the different agencies should be carried out, including the EACC, the Central Bank of Kenya (CBK), financial reporting center and the Kenya revenue authority.³⁹

The EACC after carrying out its investigations cleared the Devolution Cabinet secretary, under whose docket the NYS falls of any wrong doing. The former cabinet secretary, who resigned after much pressure from the opposition and the public, is now

³⁹ Wasuna, Brian, Court freezes 20 bank accounts in NYS Scam, Business Daily, 10/13/2015

implicating the deputy president and his close allies in the saga that cost the government millions of dollars.⁴⁰

Eurobond Scandal

In 2014, Kenya sold \$2.75 billion in bonds, and questions have been raised on how \$1.4 billion was spent.⁴¹ The contradictory statements issued by Treasury and the Central bank of Kenya (CBK) raises doubt and concern on the management of funds within the government.

Procurement

According to the EACC, 70% of all corruption in Kenya is in the area of procurement.⁴² Public officials are said to collude with those who bid for government tenders, who upon winning bids give the public officials a percentage of the money they make. Government contracts in Kenya are considered a lucrative business option, and have been described as “unpacking a bundle of entrepreneurs either supplying goods or services at inflated prices or cashing in on fictitious tender supplies and purchases”⁴³ The ‘Tenderpreneurs’ as they are known in Kenyan social media circles, are mainly associated with politicians and senior government officials who help them win contracts and subsequently share in the proceeds. Some of the bids include a county government

⁴⁰ Kahumbi, Esther, Waiguru drags DP Ruto’s name into NYS scam, Citizen Digital, 2/23/2016

⁴¹ Richardson, Paul, Kenya Orders That Report on Eurobond-Spending Probe Be Filed, Bloomberg Business, 12/2/2015

⁴² Clottery, Peter, Kenya Partners with Private Sector to Combat Graft Voice Of America, 11/15/2015

⁴³ Nsehe, Mfonobong, Corruption And ‘Tenderpreneurs’ Bring Kenya’s Economy To Its Knees, Forbes, 12/1/2015

paying \$11,650 for consultancy services related to opening and maintaining a Facebook account.⁴⁴

Current efforts to address corruption

Since coming into office, President Kenyatta has spoken of his commitment to fighting corruption and is in fact the most outspoken president the country has had on matters of corruption.⁴⁵ The measures that he has taken include directing the Attorney general and the Head of Public Service to put into operation the Asset Recovery Department at the State Law office, to enable it to fully execute its mandate to recover all property acquired through corrupt means, and to freeze property connected to corruption, so that they do not use their wealth to delay justice.⁴⁶ He has also ordered the EACC to investigate officers for fraud and publicly asked all agencies involved in the fight against corruption to work together and prosecute those found to be guilty.

However, the constant scandals involving his government officials are undermining his efforts, and making his talk appear to be cheap with no associated action plan and full commitment. In 2014, several ministers involved in on-going corruption scandals stepped down on President Kenyatta's request, and they were later fired, on suspicion of graft.

⁴⁴ Nsehe, Mfonobong, Corruption And 'Tenderpreneurs' Bring Kenya's Economy To Its Knees, Forbes, 12.1.2015

⁴⁵ Githongo, John, Kenya's rampant corruption is eating away at the very fabric of democracy, The Guardian, 8.6.2015

⁴⁶ PSCU, Uhuru says fight against corruption heightened, Daily Nation, 11.20.2015

Using the NYS scandal as an example, the Criminal Investigation directorate (CID), the EACC, and the director of public prosecution were all involved in the investigations. Unfortunately, no action was taken against the perpetrators.

Key Actors

Since taking office, President Kenyatta has addressed the negative impact that corruptions is having in the country. He has asked cabinet secretaries implicated in corruptions scandals to step aside and allow investigations to be carried out. He has raised the issue to a national level. President Kenyatta aims to run for a second term in office and his commitment to fighting corruption will help in this bid and also in determining his legacy.

The Judiciary is a state organ established by the constitution of Kenya, as an independent custodian of Justice in the country.⁴⁷ As such, they are responsible for deciding on corruption cases that are brought to it for ruling. Kenya's chief Justice in 2015, announced in the Kenyan gazette the establishment of the Anti-Corruption and Economic Crimes Division of the High Court in Nairobi, as well as the appointment of additional magistrates to deal with the corruption cases in the country.⁴⁸

The Ethics and Anti-corruption Authority (EACC) was established on 5th September, 2011 after President Kibaki signed the Ethics and Anti-corruption act. Its mandate is to "combat and prevent corruption and economic crime in Kenya through

⁴⁷ About the Judiciary, The judiciary, <http://www.judiciary.go.ke/portal/page/about-the-judiciary>

⁴⁸. Mutunga, Willy, statement by CJ Willy Mutunga on operationalizing new anti-corruption courts, the Judiciary Press Release, 1/26.2016

law enforcement, preventive measures, public education and promotion of standards and practices of integrity, ethics and anti-corruption".⁴⁹ The EACC lacks prosecution authority and can only recommend prosecution based on results of its investigations, to the Director of public prosecutions.

The Office of the Director of Public prosecution (ODPP) is mandated by the Kenyan constitution to undertake prosecution of all criminal matters.⁵⁰ Though independent, the ODPP is required to be accountable to the public by presenting an annual report to parliament and the president on its performance, and to also provide reports as may be required on matters of public interest. In its capacity as public prosecutor, the ODPP is responsible for undertaking prosecution of public cases forwarded by the police, and the EACC.

The office of the Auditor General draws its mandate from the Kenyan Constitution, Chapter 12, Part 6, and Article 229.⁵¹ The Auditor General is expected to audit and report on whether public money has been applied lawfully and effectively, and to report to parliament or county assembly on their findings. The constitution also gives this office its independence and they are not subject to direction or control from any person or authority.

⁴⁹. <http://www.eacc.go.ke/default.asp?pageid=2> accessed on 3/2/2016

⁵⁰ Office of the Director of Public Prosecutions, Mandate <http://www.odpp.go.ke/index.php/about-us/mandate.html>

⁵¹. The Constitution of Kenya 2010, Laws of Kenya, National council for Law reporting, 2010, http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/transitions/Kenya_19_2010_Constitution.pdf

The Kenyan Parliament's Public Accounts committee (PAC) is responsible for reviewing all reports that are submitted by the Auditor General and making recommendations on appropriate action to follow up and to resolve any concerns that may have been raised. Their oversight role is important in improving accountability, promoting good governance and reducing instances of fraud and corruption.⁵²

Media houses play an important role in the fight against corruption by raising public awareness about corruption and its impact, and bringing attention to the performance of the agencies involved in fighting corruption.

POLICY PROPOSAL

Corruption in Kenya comes at a huge financial cost to the economy, and grand corruption schemes are a trend that have been witnessed with every regime change in the country. With concerns of corrupt political financing, and the notion of "it's our turn to eat", where each tribe wants to maximize its personal gain when in power, the impact of corruption to Kenya's economy and to the lives of its citizens is adverse and needs immediate action.⁵³

⁵² Shiundu, Alphonse, The role of the public accounts committee: understanding the relationship between the PAC and the media, iij workshop on 'reporting on public spending' at KSMS, November 9, 2012

⁵³. Mwangi, Oscar Gakuo. 2008. "Political Corruption, Party Financing and Democracy in Kenya". *The Journal of Modern African Studies* 46 (2). Cambridge University Press: 267–85.
<http://www.jstor.org/stable/30225924>.

Policy Authorization

This proposal is intended to increase the oversight role in the use of public funds, so as to increase accountability and effective management of the public resources, and deter or detect fraud before it's too late, thereby reducing the amount of money being lost through, and to corruption.

Specifically, this proposal calls for a change in the law, which currently requires the Auditor General to perform an audit within six months after the end of the financial year.⁵⁴ Instead this proposals calls for the law to be changed to require mini quarterly audit reviews with the final year review within three months of the financial year end.

Policy Implementation

The office of the Auditor –General will be responsible for its implementation, based on their current mandate as the auditors of the Government, with their duties remaining the same, but more frequent audits being performed.

The current law on public audit gives a provision for the office of the auditor General to conduct periodic audits on demand or by their own initiative. This change in law will make periodic audits mandatory, requiring three mini audits which will be performed at the end of each quarter, and one detailed one at the end of the financial year, with the audits to be performed on all the accounts that are currently being audited.⁵⁵

⁵⁴The Public Audit Act 2015, Kenya Gazette Supplement No 208 (Acts no 34)

⁵⁵ Mandate, Office of the Auditor General, <http://www.kenao.go.ke/index.php/about-us/mandate>

Audit reports will only be provided at the end of the financial year, by the end of the second month after the year end. The quarterly audits will not require reports to be produced, but the audits should highlight to the management any practices or concerns that would have been found to be in contradiction to agreed policies and procedures. In addition, any serious matter that would be found would be required to be immediately reported to the parliamentary committee and appropriate action taken.

This policy will impact the national and county government staff, funds and authorities of the national government and county governments, the courts, and all government offices that have been previously audited by the office of the Auditor General, who will go through audits more than they are used to. The law may require a change in the internal reporting standards of government offices, to ensure that accounts would be ready for quarterly reviews.

Given the increased frequency of the audits, the Auditor-General's office will need to have additional staff so as to meet the demands of the new requirements. Though the quarterly audits are not as detailed as the one performed at the end of the year, the additional work will require an increase in staff to visit national and county offices, to review their findings and perform any necessary follow ups that may be required,

Finally, to implement this law, the office of the Auditor General is likely to require an increase in its operational budget to cover salaries for additional staff, transport costs and other costs related to the additional audits. Offices being audited

are unlikely to incur any additional costs, as a result of the increased reviews of their accounts.

POLICY ANALYSIS

The intention of this policy proposal is to increase the oversight role in the management of public finance thereby reducing the amount of money that the country loses through corrupt scandals like the Goldenberg scandal and the abuse of public procurement procedures.

The most tangible goal that this proposal will have through the proposed additional audits and shortening the reporting time is the early detection of fraud, as well as the deterrence and reduction fraud. This proposal seeks to fully maximize on the current structures in place and to enhance their effectiveness rather than suggesting an overhaul of the system, which would be more involving, costly and require it go through the whole process of setting a new law. Though the implementation may be quick as it is based on existing structures, the funds required to meet the additional audits may be the biggest challenge given the recent past, where the budget requirements for the Auditor General's office have not been met. Another challenge it would face is getting the buy-in and cooperation from the national and county governments as to the importance of the increased audits. The strengths and weaknesses are discussed in more detail below.

Proposal Strengths

Quarterly audits on all the accounts of the national and county government provide an opportunity to cover the oversight gap that has allowed wastage and abuse of public resources to go unnoticed and only be discovered when it is too late. Kenya's auditor general has already addressed the need for a change from a seasonal to continuous overview exercise that is "relevant, timely advisory and that will make appropriate recommendations to deter future malpractices."⁵⁶ He believes that offices like the Auditor General's should refocus and respond to the urge for greater accountability and public finances oversight.

In the 2013/2014 Auditor General's report, which was released in 2015, many government accounts received adverse and qualified opinions because of "material misstatements, unexplained discrepancies and omission of expenditures."⁵⁷ This included accounts of the ministry of health and ministry of education amongst others. The risk that is faced in cases like these is that funds that would have been otherwise used to provide services to the public cannot be accounted for and could be lost. If the ministries are required to prepare for quarterly audits, it will put the pressure on them to ensure timely recording of their accounts and mistakes or intentional diversions

⁵⁶ Ouko, Edward, Accountability of Public Resources, <http://www.kenao.go.ke/index.php/component/content/article/77-general/101-accountability-of-public-resources?Itemid=>

⁵⁷. Office of the Auditor general, Summary report 2013_2014 http://www.kenao.go.ke/index.php/reports/cat_view/2-reports/9-national-government-and-state-corporations/69-government-ministries

would be captured on time. It will also increase the accountability of the people managing the accounts as there is more visibility on what they do.

The proposed frequent audits provide a platform for the fight against graft in the country, by providing information that could be used by the media to highlight deviation and violation of accepted ethical and accounting standards and any potential corrupt activities, as soon as they are discovered. The media play a critical role in promoting good governance and the fight against corruption, by making the public aware of corruption as well as reporting and investigating on corruption cases.⁵⁸ The recent publications in the daily newspapers of scandals like the NYS scandal and the loss of \$180M at the Youth fund, have led to the heads of the departments stepping aside to allow investigations to be carried out, due to pressure from the public.⁵⁹ The ability to provide information to the media will increase public scrutiny on the usage of public funds and depending on prosecution of those found guilty, reduce the corruption in the country in the long term.

The proposal seeks to use the already established oversight structure in place and therefore is not a drastic change to the current law, which should facilitate its implementation.

⁵⁸. Stapenhurst, Rick. *The media's role in curbing corruption*. Washington: World Bank Institute, 2000.

⁵⁹ Obala, Roselyne, "Bruce Odhiambo steps aside as probe on Sh180m loss at Youth Fund continues" *Standard Digital*, 3/26/2016

Potential challenges that may be faced

The Auditor General's office has in the past two financial years ending June 2014 and June 2015 received only 65% and 48% respectively of their required budget, as shown in figure 1 below.⁶⁰

Fig. 1

Resource Requirement vs Allocation						
	2013-14			2014-15		
	Requirement	Allocation	Shortfall	Requirement	Allocation	Shortfall
	Kshs.m	Kshs.m	Kshs.m	Kshs.m	Kshs.m	Kshs.m
National Government Audit	2,737.60	1,911.50	826.10	4,009.74	1,930.10	2,079.64
County Government Audit	556.70	285.00	271.70	739.38	355.90	383.48
CDF Audit						
Specialized Audit/ Special Projects	906.70	564.30	342.40	675.18	325.00	350.18
Total	4,201.00	2,760.80	1,440.20	5,424.30	2,611.00	2,813.30

The devolved system of government that has been in place since 2013, requires the Auditor general's office to audit both the National and county governments but the resources allocated to the office have been further reduced. This provides a great challenge in the implementation of the proposal that will require additional staff and an increase in operating costs to meet the proposal objective. Without treasury

⁶⁰ Ouko, Edward, Speech by the Auditor General during the public open day on Accountability, KICC, Nairobi, Kenya, 11/20/2014

allocating more funds to the office the proposal is unlikely to be implemented at all, or not effectively.

In addition to the financial challenges that may be faced, the Auditor – General’s mandate is solely to audit and report but to have an impact, the reports should be read by the parliamentary committee on time and appropriate follow ups done, and if necessary government staff found guilty of corruption should be charged and prosecuted. This requires parliament, agencies, commissions and organs of the government like the judiciary, and ODPP to play their part in the fight against corruption. The information provided must be used on time and necessary action taken.

Successful audits and audit reports rely on the skill, technical knowledge and integrity of the staff. The Auditor –General’s office conducts training for its staff and they have internal processes that are followed. Unfortunately, personal integrity is something that cannot be trained, or impacted on individuals, and there is no way to measure the integrity of staff or to know whether they would be compromised in the course of their duty or decide to collude or turn their eye on fraudulent activities, which would then make the additional audits non value adding. Increasing the use of information technology may offset the risk this poses, by reducing the number of manual transactions and ensuring clear audit trails for transactions that are prone to fraud. For example, a recurrent problem that the government of Kenya faces is money being paid for services that have not been rendered or to new companies that on further analysis are found to be connected with government staff.

Currently, the constitution requires the Auditor General to audit and report on the National and county accounts within six months after the year end. These reports are submitted to parliament and the county assembly who debate on them and who are required to take action within three months after receiving the report.⁶¹ In the past, Parliament has had a huge backlog of cases, and by the time the reports are being reviewed, too much time has passed, involved people have left the government and money cannot be traced.⁶²

Given the increased workload that the office of the Auditor General is dealing with because of devolution, the Auditor General has requested that the constitutional deadlines within which the Kenya National Audit Office (Kenao) should present its reports to Parliament be extended, to allow them enough time to prepare all reports.⁶³ As this proposal requires additional audits to be done, the office of the Auditor General will not support these proposal unless additional resources and manpower are offered to them to enable them meet all their objectives. The potential amount the government will save through these additional audits is worth the investment into the additional overview, and should therefore be supported. Given his concerns about the need to do more than seasonal audits, given the right amount of support, the Auditor General is likely to support the proposal.

⁶¹ The Constitution of Kenya 2010, Laws of Kenya, National council for Law reporting, 2010, http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/transitions/Kenya_19_2010_Constitution.pdf

⁶² Njeru, K. *Public Finance under Kenya's new Constitution*. No. 5. SID Constitution Working Paper, 2014.

⁶³ Menya, Walter, Auditor General asks for extension of reports' submission time, Daily Nation, 12.31.2016

Though an independent body, the office of the Auditor General is funded by treasury, which has the potential of compromising the independency of the office. Treasury submits the national budget requirements to parliament and it's argued that for its autonomy, the office of the Auditor General should directly submit its budget estimates to the National assembly.⁶⁴ The risk that is faced is that if treasury decided to withhold funds from the Auditor- General's office, they could compromise the financial autonomy of the office and negatively impact their work. This proposal assumes that the office of the Auditor-General have mechanisms of submitting their budget estimates directly to parliament for approval.

Finally, the successful increase of the additional audits proposed will rely on the cooperation of the National and county accounts being audited. In the 2013-2014 financial year audits, delays in submission of financial statements by state agencies as well as red-tape were some of the challenges that were faced.⁶⁵ Timelines and deadlines will need to be met by the offices that are being audited. Unfortunately, this cannot be enforced by the office of the Auditor General, but is a relevant component of the success of the proposal.

⁶⁴ ICPAK, position paper on independence of the auditor general's office Kenya , <https://www.icpak.com/wp-content/uploads/2015/09/Position-Paper-on-Independence-of-the-Office-of-the-Auditor-General-in-Kenya.pdf> accessed 4/3/2016

⁶⁵. Okundi, Benson, "Strengthen public audit office for better funds usage", *Business Daily*, 10/28/2014

POLITICAL ANALYSIS

Since its last general election in 2013, Kenya has devolved its system of government and introduced new layers of management like the senate and the county assemblies. This new governance regime comes replete with new laws, as well as commissions and national bodies. There have been several adaptation problems including what functions to be handled by the national government and what should be handled by the county governments, and the newly formed senate has also sought to be included in the oversight function, by summoning cabinet secretaries to answer questions on performance whereas it's generally viewed that this is not their role.

Auditing and reporting are considered a core area of a good public financial management system. The national assembly approves the budget estimates for the national government, parliament and Judiciary and provides overall oversight over public finances at the National level, and the county assembly is responsible for similar functions at the county level.⁶⁶ Though this proposal is only seeking an amendment to an existing law, by calling for an increase in the number of audits to be conducted in the year and a change to the reporting timeline, it's bound to get challenged at both the national and county level. Governors and may feel that they are being micro managed and members of parliament may question the need for the additional finances required. That said, the level of corruption in the country seems to be escalating and some

⁶⁶. The Senate, A report on The Public Finance management (National and County Government) regulations, The sessional committee on delegated legislation and The standing committee on Finance, commerce and Budget. May 2015

politicians may seek to support the law to get favor from their constituents with a view of being elected into office once again. President Kenyatta and his government are constantly addressing the need to fight corruption, and he has taken some steps like sacking cabinet secretaries under investigation, but much more is required from him and his team for his commitment to fighting graft to be taken seriously. Below are the main strengths and weaknesses that the proposal faces politically.

Political Strengths

President Kenyatta's commitment to the fight against graft if supported by implementation of practical proposals such as this proposal will lead to successful reduction of corruption in the country. He has sacked members of his cabinet who are under investigation for graft and informed the country that his government is working with other friendly governments to return to the country assets that were illegally acquired and stored in foreign countries.⁶⁷ For example, the Swiss government has frozen KES 200M (\$2m), that is held abroad in connection to the Anglo leasing scheme. In addition to his current efforts, President Kenyatta seeks to run for a second term and any results that he can show to the public will support his bid and help build his legacy. It's reported that the president's renewed commitment to the fight against corruption is from concerns from Intelligence service who have urged the president to take decisive action in the fight against corruption.⁶⁸ The president's support is likely to support the passing of the bill that amends the law.

⁶⁷. Wanga, Justus, We will fight and win war on graft: Uhuru, *Daily Nation*, 12/13/2016

⁶⁸ Ibid.

In addition to this, the president's party, Jubilee has the majority seats in parliament, but both the ruling and the opposition leaders are constantly talking of the corruption in the country and this proposal gives them an opportunity to fight corruption and make it less prevalent in the management of public finance in the country.

In 2015, the Anti-Corruption and Economic Crimes Division of the High Court in Kenya was established, and there are 13 magistrates appointed to Anti-corruption court.⁶⁹ The purpose is to increase the capacity to deal with anti-corruption cases, and shows the Judiciary's commitment to the cause of addressing corruption in the country.

According to the Ethics and Anti-corruption commission (EACC), 75% of the Kenyan population perceives corruption in the country to be very high.⁷⁰ The level of civic participation in the country has risen, with Kenyan's holding demonstrations, seeking answers to corrupt deals that have been made public and willing to rally behind anyone who will show that they have the will and the capability to fight corruption.⁷¹ Information that will be made available from the additional audits will increase the civic responsibility of Kenyans, by making them demand answers from their leaders on the inefficiencies that are found as well as diversion of public funds. In the past, pressure from the public led to the suspension of ministers by the president.

⁶⁹. Mutunga, Willy, statement by CJ Willy Mutunga on operationalizing new anti-corruption courts, the Judiciary Press Release, 1/26.2016

⁷⁰ EACC, National Ethics and Corruption Survey, 2015 Report., <http://www.eacc.go.ke/docs/National-Ethics-and-Corruption-Survey-2015-REPORT-4March2016.pdf>

⁷¹. Africa, Viewpoint: Is Kenya serious about tackling corruption? *BBC*, 3/24/2016.

Political Challenges

Despite the positive talk and actions like increasing the magistrates to the anti-corruption courts, there are challenges that are likely to be faced in the political front in the implementation of this proposal. First, Political corruption is a huge area of concern in the country, as looking at prior scandals and recent news headline, senior government officials have been linked to cases of corruption. For example Last year, President Kenyatta suspended five members of his cabinet on suspicion of graft, and ended up sacking them.⁷² Just last month, the president handed a dossier documenting petty and grand corruption and the individuals being investigated to the speakers of the National assembly and the Senate. The list includes governors, members of parliament and permanent secretaries.⁷³

In the past, many politicians have often been linked with suspected corruption claims in the country, and it's therefore likely that some members of parliament may be opposed to the call for frequent audits and not support the motion in parliament. In addition, as parliament approves the national budgets, they may use their power to veto the request for increased budget for the Auditor –General's office.

Many have called the President's talk on corruption as empty rhetoric, and questioned his commitment. In a recent State of the nation address, President Kenyatta was heckled by opposition members of parliament who had vowed to disrupt

⁷² Ndegwa Alex, Shiundu Alphonse, Five Cabinet Secretaries axed in reshuffle as two MPs nominated, *Standard Digital*, 11/25/2015

⁷³. Editor, List of Shame: Corruption laid bare, *Daily Nation*, 3/31/2016

proceedings to protest at the government's failure to address "deep-rooted corruption" in Kenya.⁷⁴ In his defense, the sacking of the cabinet secretaries and freezing of the assets in Swiss accounts shows that there is some action that supports the president's intention and his support for this proposal would further solidify his true intent.

As the proposal requires both the national and county governments to be audited more times than is currently happening, the senate may require a hearing to discuss the bill. The constitution of Kenya states that the senate must be involved in the adoption of any bill that concerns county governments.⁷⁵ It's likely that the senators may push back and claim that this would be too much work at the county level. In the recent past, when it has come to matters that affect their personal interests, like their salaries and benefits, both the ruling party and opposition MPs and Senators have worked together to push their bills. In so far as this is seen to limit their freedom, they will not support this bill.

RECOMMENDATION

I recommend the implementation of this proposal which seeks to improve the oversight function by increasing the number of audits done in a year and reducing the time in which reports are handed to parliament, with an end goal of reducing the amount of money the country loses through corruption.

⁷⁴ Africa, Kenyan MPs whistle to stop President Kenyatta's state-of-the-nation address, *BBC*, 3/31/2016

⁷⁵ Kiplangat, Jeremiah, Ogemba Paul, Senators recalled to discuss terror laws, *Daily Nation*, December 26, 2014

Almost every day, the Kenyan news will feature a different story on corruption, which involves public officials, and this is against a backdrop of poverty and poor services that are offered by some government ministries, making the corruption even worse, as these are funds that could have been used to improve the lives of Kenyans.

The auditor general has offered that the overview exercise needs to be continuous and not seasonal. Additional audits provide the opportunity for graft to be stopped before it's too late, or a chance for it to be discovered, before too much money has been lost as in previous scandals. The knowledge that there are quarterly audits performed will also dissuade people from corrupt deals for fear of being found. Further, the availability of up to date information for the public will increase public scrutiny on financial performance and put pressure on leaders to ensure compliance and better management of public resources. The Auditor General's office is currently overwhelmed by the reports that they have to produce, and this proposal adds to their work. It is important to consider this an investment, as increased oversight is likely to reduce the amount of money the country is losing or unable to explain on how it has been used.

President Kenyatta will likely be seeking a second term in office in 2017. He has consistently addressed how much corruption is affecting the country, but there has been little to show in terms of results. The corruption in the country is at an all-time high, with many leaders at all levels of government and agencies being accused of corruption. The Agencies and commissions that have been set up to act on corruption in the country must act now, as historically they come into the scene, long after the damage has been done. To make it worse, the Kenyan judiciary has also been accused

of corrupt practices, and to date, no one is serving a sentence for any of the corrupt schemes that have been discussed in this paper.

This proposal is simple, and a build up to an existing law. It offers a chance for the oversight role to be proactive in dealing with issues and catching fraud before it's too late. It is also the belief that increased oversight will reduce instances of corruption as loopholes will be closed, and less money will be lost, as has been in Kenya's history. As Rose Ackerman offers, "the total elimination of corruption will never be worthwhile, but steps can be taken to limit its reach and reduce the harm it causes."⁷⁶

⁷⁶ Rose-Ackerman, Susan. *Corruption and Government: Causes, Consequences, and Reform*. Cambridge, U.K.: Cambridge University Press, 1999. pg. 4

Curriculum Vita

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She is currently working as a consultant at the World Bank in Washington D.C and looking forward to new experiences in the public sector and with non-profit organizations.